DAVID A. GITLITZ

IBLA 85-589, 85-843 Decided January 15, 1987

Appeals from decisions of the Eastern States and Colorado State Offices, Bureau of Land Management, rejecting simultaneous oil and gas lease offers ES 34061 and ES 34064, and dismissing protest of disqualification for C-39630.

Affirmed.

1. Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: Rentals

   Where, following a drawing of simultaneously filed oil and gas lease applications, a first-drawn applicant fails to submit the executed lease agreements within 30 days of receipt of notice to do so, the application is properly rejected.

2. Evidence: Presumptions -- Evidence: Sufficiency -- Rules of Practice: Evidence

   The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, affidavits that copies of signed oil and gas lease offers were timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

APPEARANCES: Phillip D. Barber, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

David A. Gitlitz has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated March 29, 1985, rejecting his simultaneous oil and gas lease offers ES 34061 and ES 34064 because he had failed to return the signed lease forms within the time allowed. He has also appealed the August 1, 1985, decision of the Colorado State Office, BLM, dismissing as a protest his appeal of disqualification of eligibility for lease C-39630 for the same reason. Appellant's motion to consolidate these appeals is granted.

Gitlitz' applications were given first priority for parcels ES-237 and ES-240 and CO-170 in the August 1984 simultaneous oil and gas lease drawing. On December 21 and 26, 1984, respectively, the Eastern States and Colorado State Offices, BLM, sent appellant copies of the lease forms for his signature. In the decisions accompanying the lease forms Gitlitz was given notice that he should sign, date, and return the lease forms to BLM within 30 days of receipt and that he would be disqualified from receiving a lease if he did not. 1/ Return receipt cards attached to the file copies of the notices sent by the Eastern States Office indicate they were received on December 28, 1984. 2/ The return cards bear the signature of D. Johnson. In neither case were the lease forms ever filed with BLM, although appellant claims the forms were timely mailed.

In his statement of reasons on appeal, appellant first notes that several cases hold that oil and gas lease offers should not be rejected for "'inadvertent' mistakes, 'trivial, supertechnical and inconsequential' reasons," citing (among other cases) Conway v. Watt, 717 F.2d 512 (10th Cir. 1983) and Richard W. Renwick, 78 IBLA 360 (1984). Appellant contends that BLM could have asked him when the lease forms were mailed in accordance with 43 CFR 3102.5. 3/ Appellant submitted his affidavit and that of Diane Johnson, his temporary secretary, stating, respectively, that the lease offer forms were executed and were mailed to the proper BLM offices. Appellant also submitted two affidavits of Lois McCormick, who, based on calls to several BLM offices, reported that some of them would "on occasion, accept late filings of executed leases." Based on this information appellant argues that BLM's rejection of his offers was an abuse of discretion and arbitrary and capricious.

[1] 43 CFR 3112.6-1(a) provides:

> The lease agreement, consisting of a lease form approved by the Director, and stipulations included on the posted list or later determined to be necessary, shall be forwarded to the selected applicant, if qualified, for signing. * * * The signed lease agreement shall be filed in the proper BLM office within 30 days from the date of receipt of the notice, and shall constitute the applicant's offer to lease.

In addition, 43 CFR 3112.5-1(c) provides that "[t]he application of the selected applicant shall be rejected if an offer is not filed in accordance with § 3112.6-1 of this title."

1/ The decision of the Colorado State Office said disqualification would be automatic and result in "rejection of the application without further notice."

2/ The Eastern States Office did not inscribe the name and address of the addressee in the appropriate space on the return receipt cards and the case file from the Colorado State Office does not contain a return receipt card. However, appellant does not dispute receipt of the lease forms.

3/ This regulation provides in part: "Anyone seeking to acquire * * * a Federal oil and gas lease or interest therein, shall upon demand submit additional information to show compliance with the regulations of this group and the Act."

The Board has recently stated concerning these regulations:

> These or similar regulations have been in effect for years within the Department. They have been consistently interpreted as requiring rejection of any lease application or offer where the rental payment or signed lease forms have not been timely returned to BLM. See, e.g., Eagle Basin Partnership, 76 IBLA 241 (1983); Robert D. Nininger, 16 IBLA 200 (1974), aff'd, Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975). This consistent course of adjudication was remarked upon by the U.S. Court of Appeals for the Tenth Circuit in Dawson v. Andrus, 612 F.2d 1280, 1283 (1980), which affirmed rejection of a lease offer for failure to timely pay the advance rental. As all of these cases make clear, the Board has no authority to waive the failure to timely submit the advance rental and signed lease forms regardless of any justification for this failure that an applicant might present. 4/

F. Miles Ezell, 86 IBLA 146, 147 (1985). Accord Lawrence E. Welsh, Jr., 91 IBLA 324 (1986); Janet R. Larson, 91 IBLA 151 (1986); Satellite 8211104, 89 IBLA 388 (1985); Joan S. Bennett, 87 IBLA 121 (1985); Raymond C. Long, 83 IBLA 342 (1984).

It is thus apparent that we do not regard the failure of the first-qualified applicant to file lease offer forms within 30 days of receipt as the kind of "non-substantive" error that concerned the court in Conway, supra. We do not because the rights of third parties have intervened, see Jerry W. Wolf, 70 IBLA 131 (1983) 5/; 30 U.S.C. § 226(c) (1982), and because the "regulation is reasonable and necessary to expeditious administration of the Bureau's business. The conduct of government business cannot be compelled to wait the pleasure or convenience of those persons who seek to deal with it." Jack Koegel, 30 IBLA 143, 144 (1977), quoted in Dawson v. Andrus, supra at 1283. See KVK Partnership v. Hodel, 759 F.2d 814 (10th Cir. 1985); William Reppy (On Reconsideration), 91 IBLA 191 (1986).

[2] Appellant has submitted an affidavit stating that the executed lease offer forms for leases ES 34061 and ES 34064 were in fact sent to the

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4/ Payment of the first year's rental with the filing of the lease offer forms is no longer a regulatory requirement. The regulations were amended in June 1984 to require that the first year's rental payment be submitted along with the simultaneous oil and gas filing fee. However, failure to file the lease offer forms timely still requires rejection of the application. 43 CFR 3112.6-1(a).

5/ Previously, the intervening rights involved were those of the second and third priority applicants in the simultaneous drawing. Under present regulations, only one application is selected for each numbered parcel and there are no second and third priority applicants. 43 CFR 3112.4-1(a). However, if the selected application is rejected for any reason, 43 CFR 3112.4-1(a) requires that there be a reselection from the remaining applications. Therefore, under the present regulations all other qualified applicants in the drawing have intervening rights. Kerogen Krushers, 95 IBLA 63, 67 (A. J. Burski, concurring).

Eastern States Office, BLM, during the week between Christmas and New Year's 1984. The record shows no indication that BLM received the lease offer forms. A legal presumption of regularity supports the official acts of public officers in the proper discharge of their duties. Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Phillips Petroleum Co., 38 IBLA 344 (1978). As was stated in H. S. Rademacher, 58 IBLA 152, 155, 88 I.D. 873, 875 (1981): "It is presumed that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing." When an appellant claims he delivered a document to BLM, but BLM has no record of receiving it, the presumption of regularity weighs against a finding that BLM received the document and subsequently lost it through mishandling. John R. Wellborn, 87 IBLA 20, 22 (1985). Although the presumption may be rebutted by probative evidence, it is not overcome by an uncorroborated affidavit that a missing document was mailed to BLM. Cascade Energy & Metals Corp., 87 IBLA 113, 116 (1985); Glenn W. Gallagher, 66 IBLA 49, 52 (1982); Wilson v. Hodel, 758 F.2d 1369, 1374 (10th Cir. 1985). Even assuming appellant's documents were mailed between Christmas and New Year's Day of 1984, we have long held that in mailing a document the sender assumes the risk and must bear the consequences of loss or untimely delivery of the documents by the Postal Service. See, e.g., Janet R. Larson, supra; Mary Jane Associates, 74 IBLA 43 (1983); Phil E. Parks, 69 IBLA 48 (1982). A document is filed when it is received by the proper BLM office, not when it is mailed. 43 CFR 1821.2-2(f); Cascade Energy & Metals Co., supra.

Finally, appellant's suggestion that BLM was arbitrary because it would not accept his late offers although it has allegedly done so for others merits no consideration. 43 CFR 3112.5-1(c) clearly provides that an offer shall be rejected if it is not filed in accordance with 43 CFR 3112.6-1. The fact that BLM may have failed to comply with this regulation in other cases does not justify a holding that it is authorized to do so in this one. George R. Schultz, 85 IBLA 77, 88, 92 I.D. 83, 89 (1985); T.E.T. Partnership, 84 IBLA 10, 15 (1984); George Brennan, Jr., 1 IBLA 4, 6 (1970).

Accordingly, we conclude that BLM properly rejected appellant's lease offers where the executed copies of the lease offers were not received by BLM within 30 days of receipt.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Will A. Irwin
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

John H. Kelly
Administrative Judge